IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

WP(C).No. 17476 of 2004(E)

I.A.259/04 IN OS.160/2000 of MUNI-MAGI.COURT,THODUPUZHA

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PETITIONER:

ROSE VINCENT, W/O.VINCENT,
VATTAMATTOM HOUSE, NEYYASSERY REP. BY POWER OF
ATTORNEY HOLDER, YPE S/O.MANI,
VATTAMATTATHIL, KODIKULAM.

BY ADV. SRI.T.J.MICHEAL
SRI.P.NOORSAMEER

RESPONDENT:

ANNAKUTTY, W/O.EMMANUEL,
VATTAMATTATHIL, NEYYASSERY P.O. THODUPUZHA.

BY ADV. DR.P.S.KRISHNA PILLAI
SRI.H.VINOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WPC 17476/04)

PETITIONER'S EXTS.:

EXT.P1: WRITTEN STATEMENT IN O.S.160/00.

EXT.P2: COPY OF ORDER IN I.A.249/04.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.17476 of 2004

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Dated: 20th June, 2007

JUDGMENT

Heard both sides. Ext.P2 order by which the court below has dismissed an application submitted by the petitioner for reception of written statement belatedly filed is under challenge. Inter alia it is stated by the learned Munsiff that the court has no power at all to enlarge the time for filing the written statement beyond the statutory period of 90 days. That view of the learned Munsiff cannot be said to be correct in view of the judgment of the Supreme Court in **Kailash v. Nanhku** (2005(2) KLT 623). But then the Supreme Court has only ruled that the court has power in appropriate cases for enlarging the time for filing written statement. But in the instant case, Dr.P.S.Krishna Pillai, counsel for the respondent submits that in spite of two opportunities granted, the petitioner did not file even an application for enlargement of time. This being the position, the application filed by the petitioner can be allowed only on very stringent terms. I set aside Ext.P2 and allow I.A.No.259/04 on condition that the petitioner pays a total sum of Rs.2500/- by way of cost. Out of the above cost Rs.2000/- will be paid to the respondent either directly or through the counsel appearing in this court and

Rs.500/- will be payable to the Kerala High Court Legal Services Committee within three weeks from today. If payment is not made as above, the impugned order will stand confirmed. If payment is made on time as directed above, the learned Munsiff will receive the written statement already filed by the petitioner on file and formulate issues and try the suit in accordance with law.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**